hold and the husband is allowed to recover damages for their loss. *Street Ry. Co.* v. *Twiname*, 121 Ind. 375. When she receives regular wages from her husband, even though she could not enforce payment of them, they are hers when they are paid, the presumption is that they would have continued, and consequently, as hers is the loss, it would seem that she should be allowed to recover damages therefor. But the contrary has been held. *Blaechinska* v. *Howard Mission, &c.*, 130 N. Y. 497.

After all, the general rule of law seems clear, and the only questions are practical ones for the jury. What damage has the wife suffered from the impairment of her capacity to carry on a separate employment? What damage has the husband suffered from the loss of her services in the household? It may be difficult at times to answer these questions satisfactorily. It is no easy matter to determine in every case just what constitutes a separate employment. (See the dissenting opinion of Lott, Ch. C., in *Brooks* v. *Schwerin*, *supra*.) And the position of the judge whose duty it is to instruct the jury in such a manner that they will carefully discriminate between the two elements of damage may well be no sinecure. But these are the every-day inconveniences necessarily incident to the law as a working system.

CAN A MURDERER ACQUIRE A TITLE BY HIS CRIME? — In *Riggs* v. *Palmer*, 115 N. Y. 506 (1889), the New York Court of Appeals passed upon the validity of a devise to a defendant who had murdered his testator to prevent a revocation of the will. The action was brought to have the devise cancelled and annulled. The court decreed "that the devise and bequest in the will to Elmer [Palmer, the defendant] be declared ineffective to pass the title to him; that by reason of the crime of murder committed upon the grandfather he is deprived of any interest in the estate left by him." In 4 HARVARD LAW REVIEW, 394, and 8 HARVARD LAW REVIEW, 170, it was suggested that a more satisfactory way of reach- the desirable result of this decision was to allow the devisee to take the legal title under the will, but to compel him to hold the property as constructive trustee for the heirs at law of the testator; thus avoiding the violence done to the plain letter of the Statute of Wills by reading into it a revocation clause.

In *Ellerson* v. *Westcott*, 42 N. E. Rep. 540 (N. Y.), an heir at law of the testator sued directly for a partition of lands devised to the defendant, who was alleged to have murdered her devisor. The court refused to entertain this form of action, and said that the plaintiff's only remedy was in equity to deprive the devisee of the benefit of her crime. While not expressly overruling *Riggs* v. *Palmer*, the court sharply distinguishes it from the present case in point of procedure. The following sentences are quoted from the opinion at page 542: "The devise took effect on the death of the testator, and transferred the legal title and right given her by the will. The relief which may be obtained against her is equitable and injunctive. The court in a proper action will, by forbidding the enforcement of a legal right, prevent her from enjoying the fruits of her iniquity. It will not and cannot set aside the will. That is valid, but it will act upon facts arising subsequent to its execution, and deprive her of the use of the property." From this, the New York court seems to have abandoned a position difficult to defend

in theory, and to have adopted substantially the view that a devisee by his own crime may acquire the legal, but not the beneficial, interest in the property devised.

In *Deem* v. *Millikin*, 6 Ohio Cir. Ct. R. 357, a mortgagee for value without notice from a son who had murdered his mother was properly allowed to retain realty that came to the murderer by descent from his mother. This of course is in accordance with the rule that a *bona fide* purchaser may acquire trust property free from the trust.

It is to be regretted that Pennsylvania has gone to the other extreme and holds (following *Shellenberger* v. *Ransom*, 59 N. W. Rep. 935 (Neb.), noted in 8 HARVARD LAW REVIEW, 170) that a son who murders his father may take both legal and beneficial interest by the local statute of descent. *In re Carpenter's Estate*, 32 Atl. Rep. 637 (criticised in 30 Am. Law Rev. 130).

LIABILITY OF MUNICIPAL CORPORATION FOR DEFECTIVE WATER-WORKS. — In *Springfield Fire & Marine Insurance Co.* v. *Village of Keeseville*, 42 N. E. Rep. 405, the New York Court of Appeals recently held that a municipality which maintained a public system of water-works, under a power conferred by the State, was not liable for the loss of property by fire caused by the defective condition of the water-works. The case raises the old question of the liability of a municipal corporation to private action for failure in the performance of a duty, and in the opinion of the court the general grounds upon which this question has always been decided are well set forth. The powers conferred upon municipal corporations by the State are of two sorts, which may be briefly characterized as public and private. The former are the legislative and governmental powers intrusted to the municipality as one of the political divisions of the State. The latter are those conferred for the private benefit of the municipality, which are exercised by it in its private capacity, and with which the State itself is unconcerned. Whether or not, apart from statute, a city is liable to private action for failure in the performance of a public duty specifically enjoined, is a disputed question, though probably it would generally be answered in the affirmative. It is perfectly well settled, however, that for neglect in the exercise of public, discretionary powers, a municipality is no more liable in tort than the State itself would be, while for neglect in the exercise of any private power, it incurs the same liability as a private corporation. *Maxmilian* v. *Mayor, &c. of New York*, 62 N. Y. 160; *Eastman* v. *Meredith*, 36 N. H. 284; Dillon on Municipal Corporations, §§ 965 *a*, 980; Goodnow on Municipal Home Rule, ch. vii.

The difficulty arises in determining to which class any particular power belongs. Is a city which establishes and maintains a system of water-works by permission of the State exercising a governmental function, or is it merely performing the work of a private corporation? The argument from analogy leads to but one conclusion. The cases where the city is liable to an action of tort for failure to perform a duty voluntarily assumed are limited strictly to those where the duty is incurred in the performance of such a purely business undertaking as the management of docks and wharves at a profit. *Mayor, &c. of Lyme Regis* v. *Henley*, 3 B. & Ad. 77; *Pittsburgh City* v. *Grier*, 22 Pa. St. 54. Where the duty is undertaken for the public good, the city is not liable. It is accordingly held everywhere that the power to establish a fire department is governmental, and